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The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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UNITED STATES OF AMERICA,

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Plaintiff,

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vs.

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BERNARD ROSS HANSEN and

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DIANE RENEE ERDMANN,

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Defendants.

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Case No. 2:18-cr-00092-RAJ

STIPULATION OF THE PARTIES RE:
MOTION FOR ORDER TO PREVENT
SPOILATION OF EVIDENCE

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The defendants, Bernard Ross Hansen and Diane Renee Erdmann, moved this Court for an Order preventing the destruction and spoliation of evidence in the possession and control of the Chapter 11 Trustee, Mark Calvert. Dkt. 30 (Motion); *see also* Dkt. 34 (Government Response); Dkt. 32 (Limited Objection by Trustee); and Dkt. 35 (Joint Reply to Govt. Response). At a hearing on the motion held June 18, 2018, the Court directed the parties to meet and confer regarding practical solutions to the issues presented in the motion.

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The parties have since met and conferred on numerous occasions and the Trustee provided the Government and the defense access to the Nevada warehouse where the records at the heart of

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1 the motion were located. Based on these discussions and the on-site review of the facility, the
 2 parties agreed on the following:

- 3 • According to the Trustee, NWTM's accounting and financial records and emails are
 4 stored on servers owned and maintained by Green House Data (the "Cloud Servers")
 5 pursuant to a contract between NWTM and Green House Data. The Cloud Servers are
 6 maintained at the expense of the NWTM bankruptcy estate. The Trustee believes he
 7 soon will no longer need access to the data stored on the Cloud Servers. The
 8 Government and Defense have declined to assume the contract for maintenance of the
 9 Cloud Servers.
- 10 • The Trustee will produce mirror images of the Cloud Servers, created on or about June
 11 30, 2018, which contain NWTM's accounting and financial records and emails (the
 12 "Server Copies");
- 13 • The Trustee provided the Government and Defense team access to the Nevada
 14 warehouse on June 27 and June 28, 2018. There were more than 1400 boxes identified
 15 as records from the years 2009 through 2016 related to the business of NWTM, and
 16 segregated accordingly (the "2009-2016 Physical Records"). The Physical Records
 17 include a wide variety of documents that were stored by NWTM through the years.
- 18 • In July 2018, the 2009-2016 Physical Records were shipped from Dayton, Nevada, to
 19 Seattle, Washington, and on agreement of the parties, they are stored at the Federal
 20 Center South in the custody of the Government. The Government has made these
 21 Records reasonably available for the defendants' review, and will continue to make the
 22 Records reasonably available for defendants' review throughout the pendency of this
 23 case.
- 24 • The parties agree that the Government may destroy or otherwise dispose of any of
 25 these boxes of Physical Records at any time, upon agreement of the attorneys for the
 26 defendants, and without further Court order. In the event the parties cannot agree as to

whether particular records may be destroyed, the parties may file a motion with the Court to resolve any such disputes.

- Any remaining boxes stored in the Nevada warehouse are irrelevant to further bankruptcy proceedings or the pending criminal case. Such records primarily contain business records of NWTM dating from the 1980's to 2008;
- The remaining boxes of records that date from the year 1980 to 2008 (the "Pre-2009 Records") are of inconsequential value to the estate and in fact, are burdensome and costly to store.
- On agreement of the parties, and pursuant to an order entered by the Honorable Christopher M. Alston, United States Bankruptcy Judge in Case No. 16-11767, United States Bankruptcy Court for the Western District of Washington (the "NWTM Bankruptcy"), Mr. Hansen retrieved, and made arrangements to store, many of the pre-2009 Records. The pre-2009 Records not retrieved by Mr. Hansen were destroyed. The Trustee delivered to Hansen's storage locker additional records that he requested at no cost to Hansen.
- There are also several physical servers formerly located in Dayton, Nevada (the "Dayton Facility"), that may contain accounting, financial, or email data, but, per the Trustee, primarily contain artwork files (the "Physical Servers") and run the security system. The Trustee has surrendered possession of the Dayton Facility to the landlord. Pursuant to a settlement agreement between the bankruptcy estate and the landlord, which is pending approval by the Bankruptcy Court, the Physical Servers will be transferred to the landlord, with the Trustee retaining the right to access the data on the Physical Servers.
- The Government and Defense shall be granted access to the Physical Servers to make copies of any business records thereon. After October 31, 2018, unless additional time is requested for good cause, the Trustee may, at his discretion, delete the data from the Physical Servers.

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1 Accordingly, for the reasons stated above and in the interests of justice, the parties agree
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3 and respectfully recommend that the Court enter the attached proposed stipulated order

4 Respectfully submitted this 11th day of October, 2018.

5 s/ Jennifer E. Wellman and Dennis P. Carroll

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CERTIFICATE OF SERVICE

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2 I hereby certify that on this date, I electronically filed the foregoing document with the Clerk
of the Court using the CM/ECF system, which will send notification of such filing to the following:

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15 DATED: October 11, 2018, at Seattle, Washington

16 */s/ Denise A. Lentz*
17 Denise A. Lentz, Paralegal

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